IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WA.No. 1751 of 2004(A)

AGAINST THE JUDGEMENT IN WP(C) NO.41070/2003 Dated 16/07/2004

APPELLANT: PETITIONER:

MRS.SOBHANA.K.K.,
W/O.K.K.SURENDRAN, KOLAPARAMBIL HOUSE,
MOOKKUTHALA P.O., MALAPPURAM DIST.

BY ADV. SRI.GOVIND K.BHARATHAN

RESPONDENTS: RESPONDENTS:
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1. THE INDIAN OIL CORPORATION,
PANAMPILLY AVENUE, PANAMPILLY NAGAR,
KOCHI-36, REPRESENTED BY ITS
SR.AREA MANAGER.

2. MRS.JASMIN, W/O.ADV.MUSTHAPHA KAMAL,
PUTHIYAVEETTIL NAKKOLAKKAL HOUSE,
PERUMPPADAPPU P.O., NEAR PUTHUPALLY JARAM,
MALAPPURAM DIST.

R1 BY ADVS.M/S.NANDAKUMAR E.K. AND JAYASANKAR A.K.
R2 BY ADV. SRI.T.KRISHNAN UNNI
SRI.PRABIN BABU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1751 OF 2004 A

Dated this the 12th July, 2007

JUDGMENT

H.L.DATTU, C.J.

The judgment under challenge is the judgment rendered by the learned single Judge in W.P.(C) No.41070 of 2003, dated 16th July, 2004.

2. The subject matter of this Writ Appeal is the refusal to grant LPG Distributorship to the appellant by the first respondent, Indian Oil Corporation.

3. Pursuant to the notification issued for appointing a distributor for LPG distribution, appellant, second respondent and others had participated. In the notification issued, one of the conditions was that the applicant should not have an income of more than Rs.Two lakhs per annum.

4. The first respondent Corporation, after an assessment of the eligibility of the appellant and the second respondent, had assigned the second rank to the second respondent and the third rank to the appellant.

5. Appellant had questioned the ranking so assigned by the first respondent in W.P.(C) No.41070 of 2003. Learned single Judge

by judgment dated 16th July, 2004, has rejected the Writ Petition. While doing so, the learned single Judge has observed at paragraph 5 as under:

> "5. Except the averments in the writ petition, no material has been produced to support the allegation of the petitioner regarding the income of the second respondent. So, the point raised by the petitioner is a disputed question of fact, which cannot be settled under Article 226 of the Constitution of India. Further, the first respondent was denied an opportunity to enquire into the allegations also, as the petitioner has not filed any representation before it, before approaching this Court."

6. Aggrieved by the said judgment delivered by the learned single Judge, the petitioner in the Writ Petition has filed the present Writ Appeal.

7. This Court, while entertaining the Writ Appeal, has passed an order dated 28th February, 2005, permitting the appellant to appear before the first respondent Corporation and prove her claim that the second respondent has an income of more than Rs.30-40,000/- per month. Further, the Court had directed the Corporation to consider the material that the appellant may produce and file a report before this Court within three weeks from the date of the order.

8. Since the time that was given to the appellant was very short, it appears, the appellant could not produce enough and more material to demonstrate that the second respondent has an income of more than Rs.30-40,000/- per month. Since the appellant failed to produce the documents in support of her claim, a report came to be filed by the first respondent Corporation before this Court within the time granted.

9. It appears, the matter was posted before this Court on 23.3.2006 and since no representation was made, the appeal came to be dismissed for non-prosecution. On an application filed by the appellant, the said appeal came to be restored only on 17th January, 2007. Since there was no impediment to award the LPG distributorship to the second respondent, the first respondent had awarded the same to the second respondent.

10. The second respondent is now continuing to do business without any hindrance from anybody.

11. Learned counsel appearing for the appellant would submit that at least an opportunity may be given to the appellant to demonstrate before the first respondent Corporation that the second respondent was ineligible for appointment as a distributor of LPG, since the time that was given to the appellant by the first respondent Corporation pursuant to the interim order passed by this Court was too short.

12. In our opinion, if such permission is granted without disturbing the award of distributorship that was already granted by the first respondent Corporation in favour of the second respondent, no injustice or prejudice would be caused to any one of the parties.

13. Therefore, without going to the other details on the merits of the case, the Writ Appeal is disposed of as under:

i) The judgment delivered by the learned single Judge is set aside.

ii) The appellant is granted three weeks' time from today to

appear before the first respondent Corporation to demonstrate that the second respondent had a minimum income of Rs.30-40,000/- per month on the date of filing of the original application and, therefore, she is ineligible for appointment as an LPG Distributor.

Iii) The first respondent will permit the appellant to produce all such documents which are in her possession to demonstrate the income of the contesting respondent. The first respondent will also afford reasonable opportunity to the second respondent to rebut the same by producing oral and documentary evidence.

iv) After considering the claim and counter claim of the appellant and the second respondent, the first respondent will furnish a copy of the report to both the parties. If, for any reason, the parties are aggrieved by the said report, they are at liberty to approach the appropriate forum for appropriate reliefs, for redressal of their grievances.

Consequently, all the pending interlocutory applications are rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.